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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~[illegible]~~ 158

ELIZABETH S. PIERCE, APPELLANT,

vs.

WALTER S. COX, TRUSTEE AND ADMINISTRATOR OF JAMES R. YOUNG, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Dismissed

FILED DECEMBER 12, 1868.

Chase C.J.

SUPREME COURT OF THE UNITED STATES.

No. 369.

ELIZABETH S. PIERCE, APPELLANT,

vs.

WALTER S. COX, TRUSTEE AND ADMINISTRATOR OF JAMES R. YOUNG, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 CLERK'S OFFICE, SUPREME COURT
OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the following forty-seven pages (writings) are true and complete copies, are on file and of record in the clerk's office of said court; and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Elizabeth S. Pierce vs. Walter S. Cox, trustee & adm'r, No. 816, equity docket 8.

In testimony whereof, I hereto subscribe my name and affix the seal of said court, Oct. 19, 1868.

[SEAL.] R. J. MEIGS, *Clerk, &c.*

2 1866, Nov. 19.] *Original bill.*

ELIZABETH S. PIERCE
vs.
WALTER S. COX, trustee and adm'r. } No. 816, equity doc., 8.

To the hon. the supreme court of the District of Columbia, sitting in equity:

The bill of complaint of Elizabeth S. Pierce respectfully sheweth, that a certain James R. Young departed this life prior to 1865, having first duly executed his last will & testament, a copy whereof, marked "Exh. A," is herewith filed and prayed to be taken as part of this bill; that a certain Walter (S.) Cox, of Washington county, in the District of Columbia, who is prayed to be made a defendant hereto, hath duly been appointed administrator, with the will annexed, of said testator, by the authority of the orphans' court in and for said county; and the said Cox hath also been duly appointed by the decree of your honorable court, trustee, to execute the trusts of said will.

Your oratrix further sheweth, that as such administrator and trustee, the said Cox hath sufficient assets in his hands to execute the
3 trusts in said will, and especially that which relates to the investment of twelve hundred dollars for the purchase of a dwelling-house for the benefit of your oratrix. And your oratrix avers that she has applied to said Cox to execute said trust, but he declines to do so without the order of your honorable court.

Inasmuch as your oratrix is remediless at the common law, and to the end that the said Cox may be decreed specifically to execute the trusts of said will in behalf of your oratrix, and specially to invest the said sum of twelve hundred dollars under the direction of your oratrix, and that the said Cox may answer this bill, and that your oratrix may have such other and further relief as may seem right and proper, may it please your honours to grant unto your oratrix the United States writ of subpœna, directed to the said Walter S. Cox, commanding him to appear and answer according to the usual course of this court.

ROBERT J. BRENT,
For Compl't.

4 1868, Nov'r 19.] *Exhibit "A" to bill.*

The last will & testament of James R. Young, at present in the city of Washington, in the District of Columbia.

I hereby authorize, empower, and request the judge of the orphan's court of Washington county in the District of Columbia, or other proper tribunal having jurisdiction of the matter, to appoint an executor or

trustee of this my last will and testament, it being however hereby distinctly ordered and directed by me that no relation or connection of mine shall be appointed said executor or trustee. Said executor or trustee to give bond with sureties and in amount as shall be directed and approved by the court.

I give and bequeath two thousand five hundred dollars of quarter-yearly dividend-paying six per cent. stock of the corporation of Washington, in the District of Columbia, to be sold at par if the same can be obtained within four months after my decease, and if not, then to be sold for the best price and the proceeds thereof to be used in the erection of a handsome

JAMES R. YOUNG.

5 plain, but large and tall obelisk monument of white Italian marble over the remains of my parents buried near Alexandria, in the State of Virginia; if necessary, the remains of my mother to be placed in the same grave with those of my father—with the simple inscription—"To the memory of our father Gen. Robert Young and of our mother Elizabeth Young, erected by their children"—and enclosing the lot in which they are buried with a handsome iron railing—the tombs now over them to be placed aside on the grave yard.

I give and bequeath six hundred dollars of quarter-yearly dividend-paying six per cent. stock of the corporation of Washington, in the District of Columbia, to be sold for the best price, and the proceeds thereof to be used in defraying the expenses of my burial. I direct to be buried in Greenwood cemetery near the city of New York, a city where I have ever desired to live. If the money be sufficient, let a plain monument be placed over me with the simple inscription—"To the memory of James Robert Young," but, if not sufficient, then a plain slab to be placed at my head with the above

JAMES R. YOUNG.

6 inscription. I direct that my body be kept three entire days—seventy-two hours, before its removal, and that it then be placed in a vault, the lid of the coffin being simply laid on top, not screwed down, for one month before being put in the ground.

I give and bequeath to my executor or trustee to be appointed as aforesaid five (5) State of California seven pr cent. coupon bonds, to wit, four (4) of one thousand dollars each, and one (1) of five hundred dollars; also four (4) city of San Francisco, in the State of California, ten per cent. coupon bonds, to wit: Two (2) of one thousand dollars each, and two (2) of one hundred dollars each; also one (1) State of Louisiana six per cent. coupon bond of one thousand dollars; also one State of Tennessee six per cent. coupon bond of one thousand dollars; also four hundred dollars of the remaining quarter-yearly dividend-paying six per cent. stock of the corporation of Washington, in the District of Columbia, after the two aforegoing bequests in said stock shall have been satisfied; also four hundred dollars of half-yearly dividend-paying

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7 six per cent. stock of the corporation of Washington, in the District of Columbia; total nine thousand five hundred dollars. In trust to hold the same for the use of Robert Bond, if he attains the age of twenty-one years, said Robert Bond being the son of (now) Mrs. Elizabeth S. Pierce, wife of George W. Pierce, now or late of the city of Baltimore, in the State of Maryland, said Robert Bond having been born in the first ward of the city of Washington, in the District of Columbia, on or about the fifteenth of May, in the year eighteen hundred and fifty-eight, previous to her marriage with said George W. Pierce.

It is my intention and will, and I hereby order and direct that the interest or income of said bonds and stock, or such portion thereof as may be necessary, shall be used by my said executor or trustee for the support, clothing, and education of said Robert Bond, and if the same be sufficient, after providing liberally for said expenditure, that then the annual sum of two hundred and forty dollars thereof, or if not sufficient, then what can be paid, shall be paid to his mother until

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8 his death, if he shall die under the age of twenty-one years, if she be still living, or until her death, if she shall die before her son, the said Robert Bond as aforesaid, or before he shall attain the age of twenty-one years, to be paid to her, if practicable, monthly, the same to be paid to her in person for her sole and separate use on her sole and separate receipt, and free from the debts, control, or engagements of her present or any future husband, and should there be any surplus thereafter, then the same to be invested and kept invested in not less than six per cent. registered stock of the State or city of New York, the first if possible, and to be held on the same trust as aforesaid.

It is my desire and wish that my executor or trustee shall be appointed guardian to said Robert Bond and not his mother, nor her present nor any future husband, none of whom shall receive or have any control over the money, principal or interest, hereby bequeathed for his benefit, except his mother, to receive the portion of the interest to be paid to her as aforesaid—and that he be removed from the influence and control of his mother and boarded in

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9 some genteel and respectable family, and that at the age of eighteen years he be put as a clerk in some large importing house in the city of New York, with men of approved honor and integrity—to become a merchant.

And should any or all of said bonds and stock or any part thereof, be paid them, I hereby order and direct the proceeds thereof to be invested and kept invested in not less than six per cent. registered stock of the State or city of New York—the first if possible, and to be held in trust as aforesaid.

I give and bequeath all other bonds and stocks which may be my property, or be in possession at the time of my decease (except twelve hundred dollars thereof of half-yearly dividend-paying six per cent. stock of the corporation of Washington in the District of Columbia, otherwise given and bequeathed as hereinafter set forth and contained) as follows, to wit:

Three eighths thereof to my said executor or trustee in trust to hold the same for the sole and separate use of my sister Mrs. Roberta Y.

JAMES R. YOUNG.

10 Brown, wife of Albert G. Brown, of the State of Mississippi, the interest or income thereof, when and as the same shall accrue and be by him received, to be paid to her in person on her sole and separate receipt, or to her sole and separate written order, free from the debts, control, or engagements of her present or any future husband—said bonds stocks to be held subject to such direction as to the disposition of the same as the said Mrs. Roberta Y. Brown may at any time give in writing to my said executor or trustee—and should she in writing direct the said bonds and stocks or any of them to be commuted for other property, then to hold the property so received in commutation on the same trust as aforesaid—or should she in writing direct the said

bonds and stocks, or any of them to be delivered to her, then it is my intention and will that the same be delivered to her in person, on her sole and separate receipt, or to her attorney, on her sole and separate written order, he giving his receipt therefor.

In case of the death of Mrs. Roberta Y. Brown

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11 before this bequest to her shall be carried into effect, or in case of her death thereafter, then it is my intention and will, and my said executor or trustee is hereby ordered and directed to hold the same or any part thereof still remaining in his hands in trust for the use of her two sons, Robert Y. Brown, if he attains the age of twenty-one years, and Joseph Brown, if he attains the age of twenty-one years, free from any control by or liability for or on account of the debts or engagements of their father—the interest dividends, or income thereof, when and as the same shall accrue and be by him received, to be invested and kept invested in not less than six per cent. registered stock of the State or city of New York, the first if possible—in trust for their use; and in case of the death of either under the age of twenty-one years, unmarried, or if married, childless, then the whole to go to the survivor as aforesaid.

And should any or all of said bonds or stocks, or any part thereof, be paid, then I hereby order and direct the proceeds of the same to be invested and kept invested in not less than six per cent.

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12 registered stock of the State or city of New York, the first if possible, and to be held in trust as aforesaid.

Three-eighths other part thereof to my executor or trustee—in trust—to be divided equally among my nieces, the daughters of the wife now deceased, of Philip R. Fendall, of Washington city, in the District of Columbia, and in case of the marriage of either or any of them before this bequest to them shall be carried into effect, then her or their portions thereof to be settled to and for her or their use, separate and apart from her or their husband or husbands; the interest, dividends, or income thereof to be paid to her or them in person, on her or their sole and separate receipt or receipts, and the same as well as the principal to be free from the debts, control, or engagements of her or their husband or husbands; and the principal to be disposed of by her or them as she or they may see fit, and separate and apart from her or their husband or husbands. And in case of the death or marriage, and death of either or any of them without issue, before this

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13 bequest to them shall be carried into effect, then the whole to go to the survivor or survivors.

And should any or all of said bonds and stocks or any part thereof be paid while in the hands of my said executor or trustee, then I hereby order and direct the proceeds of the same to be invested and kept invested in not less than six per cent. registered stock of the State or city of New York, the first if possible, and subject to the same terms, conditions, and provisions as above.

One-eighth other part thereof to my nephew, James R. Y. Fendall, son of the wife now deceased, of the said Philip R. Fendall, of Washington city, in the District of Columbia, and in case of his death unmarried or if married childless before this bequest to him shall be carried into effect, then the same to be added to the aforegoing bequest to the daughters of the wife now deceased, of the said Philip R. Fendall, on

the same terms, conditions, and provisions as above expressed in regard to the other gift made to or for them.

And the remaining one-eighth thereof to the children of my brother, the late William S. Young,

JAMES R. YOUNG.

14 of Philadelphia, Pennsylvania.

It is my advice to Robert Bond not to marry until he shall have attained the age of twenty-eight or thirty years, but if he should injudiciously marry, and should die under the age of twenty-one years, leaving a child or children him surviving, then I do hereby give and bequeath all the bonds and stocks held in trust for his use at that time (except five hundred dollars of the best thereof, (to be selected by my executor or trustee,) which I give and bequeath to be sold for the best price, and the proceeds thereof used in erecting a monument to the memory of said Robert Bond) to my said executor or trustee, in trust, to hold the same for the use of such child or children as shall attain the age of twenty-one years, the interest or income thereof or such portion thereof as may be necessary to be used for its or their support, clothing, and education, the surplus, if any, to be invested and kept invested in not less than six per cent. registered stock of the State or city of New York, the first, if possible, in trust, for its or their use as above expressed, provided that if said child or children, or either or any of them, shall marry and

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15 die under the age of twenty-one years, leaving a child or children him or her surviving, then to hold the parent's portion thereof, in trust, for the use of such child or children as shall attain the age of twenty-one years, the interest or income thereof or such portion thereof as may be necessary to be used for its or their support, clothing, and education, the surplus, if any, to be invested and kept invested in not less than six per cent. registered stock of the State or city fo New York, the first, if possible, in trust, for its or their use as above.

And should any or all of said bonds and stocks or any part thereof be paid, then I hereby order and direct the proceeds of the same to be invested and kept invested in not less than six per cent. register stock of the State or city of New York, the first, if possible, and to be held in trust as aforesaid.

And should the said Robert Bond marry, and die under the age of twenty-one years, leaving no child or children him surviving, said child or children and also his grandchild or grandchildren,

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16 if any such there should be, shall die under the age of twenty-one years, but his widow still surviving, then I give and bequeath all the bonds and stocks so held, in trust, by my executor or trustee at that time (except five hundred dollars of the best thereof to be selected by my executor or trustee) which on the death of the said Robert Bond I give and bequeath to be sold for the best price, and the proceeds thereof used in erecting a monument to his memory; to my said executor or trustee, in trust, to hold the same for the benefit of the widow of the said Robert Bond, for and during the residue of her natural life, the interest or income thereof, when and as the same shall accrue and by him received, to be paid to her in person for and during the residue of her natural life, for her sole use, and should she again marry or have married for her sole and separate use on her sole and separate receipt, and free from the debts, control, or engagements of her husband or husbands.

And should any or all of said bonds and stocks, or any part thereof, be paid, then

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17 I hereby order and direct the proceeds of the same to be invested in not less than six per cent. registered stock of the State or city of New York—the first if possible—and to be held in trust as aforesaid.

And on her death or the death of her children or grandchildren as aforesaid, she being dead, I give and bequeath the same as follows, to wit: Three-eighths thereof to Mrs. Roberta Y. Brown and her two sons, Robert Y. Brown and Joseph Brown, in the same manner and on the same terms as the bequest hereinbefore mentioned is given to her and her said sons; three-eighths other part thereof to the daughters of the wife, now deceased, of Philip R. Fendall in the same manner and the same terms as the bequest hereinbefore mentioned is given to them; one-eighth other part thereof to James R. Y. Fendall in the same manner and on the same terms as the bequest hereinbefore mentioned is given to him; and the remaining one-eighth thereof to the children of the late William S. Young.

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18 But should the said Robert Bond die under the age of twenty-one years, and unmarried, then I give and bequeath all the bonds and stocks held in trust for his use at that time as follows, to wit: Five hundred dollars of the best thereof, (to be selected by my executor or trustee,) to be sold for the best price, and the proceeds thereof used in erecting a monument to his memory, and the residue or remainder thereof as follows: Three-eighths thereof to Mrs. Roberta Y. Brown and her two sons, Robert Y. Brown and Joseph Brown, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to her and her said sons; three-eighths other part thereof to the daughters of the wife, now deceased, of Philip R. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to them; one-eighth other part thereof to James R. Y. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to him; and the remaining one-eighth thereof to the children of

JAMES R. YOUNG.

19 the late William S. Young.

Should the said Robert Bond live to attain the age of twenty-one years, and shall afterwards die intestate, leaving a widow and child or children him surviving, then I give and bequeath all the interests, which he shall have taken under the provisions of this my last will and testament (except five hundred dollars thereof, which I give and bequeath to be used in erecting a monument to his memory) to said widow and child or children as the law gives the same. Or should the said Robert Bond live to attain the age of twenty-one years, and shall afterwards die intestate, leaving only a child or children him surviving, then I give and bequeath all the interests which he shall have taken under the provisions of this my last will and testament (except five hundred dollars thereof, which I give and bequeath to be used in erecting a monument to his memory) to said child or children. Or should the said Robert Bond live to attain the age of twenty-one years, and shall afterwards die inestate, leaving

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20 only a widow him surviving, then I give and bequeath the income of all the interests which he shall have taken under the provi-

sions of this my last will and testament (except five hundred dollars thereof, which I give and bequeath to be used in erecting a monument to his memory) to said widow for her use for and during the residue of her natural life, and should she again marry for her sole and separate use on her sole and separate receipt free from the debts, control, or engagements of her husband or husbands, and on her death I give and bequeath the principal as follows, to wit: Three-eighths thereof to Mrs. Roberta Y. Brown and her two sons, Robert Y. Brown and Joseph Brown, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to her and her said sons; three-eighths other part thereof to the daughters of the wife, now deceased, of Philip R. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to them; one-eighth other part thereof to James R. Y. Fendall, in the same manner

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21 and on the same terms as the bequests hereinbefore mentioned are given to him; and the remaining one-eighth thereof to the children of the late William S. Young.

But should the said Robert Bond live to attain the age of twenty-one years and shall afterwards die unmarried and intestate then I give and bequeath all the interests which he shall have taken under the provisions of this my last will and testament, (except five hundred dollars thereof, which I give and bequeath to be used in erecting a monument to his memory,) as follows, to wit: Three-eighths thereof to Mrs. Roberta Y. Brown and her two sons, Robert Y. Brown and Joseph Brown, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to her and her said sons; three-eighths other part thereof to the daughters of the wife, now deceased, of Philip R. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to them; one-eighth other part thereof to James R. Y. Fendall, in the same manner and on the same terms as the bequests herein-

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22 before mentioned are given to him; and the remaining one-eighth thereof to the children of the late William S. Young.

In all the aforegoing bequests made to Mrs. Roberta Y. Brown and her two sons, Robert Y. Brown and Joseph Brown; to the daughters of the wife, now deceased, of Philip R. Fendall; to James R. Y. Fendall; and to the children of the late William S. Young, it is my intention and will, and I hereby order and direct that the bonds and stocks shall be taken at par, and not at their market value whether more or less; and that Mrs. Roberta Y. Brown and her said sons shall have the selection of one-eighth of their portion thereof first; then the daughters of the wife, now deceased, of Philip R. Fendall, shall have the selection of one-eighth of their portion thereof; and so on alternately until the portions of each are chosen; then J. R. Y. Fendall shall have the selection of his portion thereof, and lastly the children of the late William S. Young.

I hereby order and direct my executor or trustee to keep all bonds, and stocks, and certificates of stock in a fire and burglar proof safe & vault.

I give and bequeath all money which may be my property or be in my possession at the time of my decease as

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23 follows, to wit: One-half thereof to my said executor or trustee in trust, to invest and keep the same invested in not less than six per cent. registered stock of the State or city of New York—the first if

possible, and to hold the same for Mrs. Roberta Y. Brown and her two sons, Robert Y. Brown and Joseph Brown, on the same trust as aforesaid; and the remaining one-half thereof to my said executor or trustee in trust, to be divided equally among the daughters of the wife, now deceased, of Philip R. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to them.

I give and bequeath to my said executor or trustee twelve hundred dollars of half-yearly dividend-paying six per cent. stock of the corporation of Washington, in the District of Columbia—in trust, to sell the same at par if that price can be obtained within four months after my decease, and if not then to sell the same for the best price, and to use the proceeds thereof in the purchase of a dwelling house for the benefit of Mrs. Elizabeth S. Pierce, the mother of Robert Bond, in the city of Baltimore or elsewhere, as she may elect, and in writing within three months after my decease, or as soon thereafter as practicable; the same

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24 to be conveyed to and to be held by my said executor or trustee in trust, for the benefit of the said Mrs. Elizabeth S. Pierce for and during the residue of her natural life, and free from the debts, control, or engagements of her present or any future husband; to be used by her as a residence, or rented, as she may elect; and if rented, the rent thereof as the same shall accrue and be received by my said executor or trustee to be paid to her in person, for her sole and separate use, on her sole and separate receipt, and free from the debts, control, or engagements of her present or any future husband; and on her death I hereby order and direct the same to be sold for the best price, and the proceeds thereof I give and bequeath as follows: One-half thereof to be equally divided among the daughters of the wife, now deceased, of Philip R. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to them; and the remaining one-half thereof to Mrs. Robert Y. Brown, and her two sons, Robert Y. Brown and Joseph Brown, in the same manner, and on the same terms, as the bequests hereinbefore mentioned are given to her

JAMES. R. YOUNG.

25 and her said sons. And should the said Mrs. Elizabeth S. Pierce die before this bequest for her benefit shall be carried into effect, then I give and bequeath one-half of the stock, if not sold, to be equally divided among the daughters of the wife, now deceased, of Philip R. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to them, and the remaining one-half thereof to Mrs. Robert Y. Brown, and her two sons, Robert Y. Brown and Joseph Brown, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to her and her said sons. Or if sold, then I give and bequeath one-half of the proceeds thereof to be equally divided among the daughters of the wife, now deceased, of Philip R. Fendall, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to them, and the remaining one-half thereof to Mrs. Roberta Y. Brown and her two sons, Robert. G. Brown and Joseph Brown, in the same manner and on the same terms as the bequests hereinbefore mentioned are given to her and her said sons.

I give and bequeath my gold watch and

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26 guard, and all jewelry which may be my property or be in my possession at the time of my decease, to Mrs. Roberta G. Brown.

In witness whereof I have to this my last will and testament, contained

in thirteen pages of paper, set my hand and seal, to wit: To the first twelve pages my name, and to this last page my hand and seal, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-two.

JAMES R. YOUNG. [L. S.]

Signed, sealed, published, and declared by the said testator, James R. Young, as and for his last will and testament, in our presence, who, in his presence, and at his request, and in the presence of each other, have hereto subscribed our respective names as attesting witnesses, the day and year lastly above-written.

JOHN S. HOLLINGSHEAD, *Washington City, D. C.*
SAM. BRERETON, *do.* "
EDM. F. BROWN, *do.* "

27 Orphans' court.—November 4th, 1865.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

This day appeared Samuel Brereton and Edmund F. Brown, two of the subscribing witnesses to the aforegoing last will and testament of James R. Young, late of Washington county aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named, sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract, and that their names, as witnesses to the aforesaid will, were signed in the presence and at the request of the testator, and in the presence of each other, and also in the presence of John S. Hollingshead, the other witness thereto.

Test:

Z. C. ROBBINS, *Register of Wills.*

28 1866, Nov. 19.] *Answer of the defendant.*

To the hon. judges of the supreme court of the District of Columbia:

The answer of Walter S. Cox to the bill of complaint of Elizabeth S. Pierce.

This respondent, for answer, says: He admits that he was appointed adm'r cum test. annexo, of James R. Young, dec'd, by the orphans' court of the District of Columbia, and also trustee to execute the trusts of said will by y'r hon. court, sitting in equity.

He shows that by his last will and testament, a copy of which is filed as an exh't with complainant's bill, said Young bequeathed twelve hundred dollars of stock of the corporation of Washington, to be sold and the proceeds to be laid out in the purchase of a house for the benefit of complainant for her life, with certain limitations over in case of her death, and he admits that he has assets sufficient for the payment of said legacy.

But respondent further shows, that since the execution of said
29 will, the said James R. Young did, in fact, as he is informed and believes, advance a larger sum than the amount of the above bequest, for the purchase of a dwelling-house for the use of said Elizabeth S. Pierce, for her life, and caused the same to be conveyed to himself, as trustee for her, as appears by the original deed for said house, herewith

filed and marked "Def'ts Exh't, No. 1." And respondent shows, that said advancement during his lifetime, by said testator, of a larger sum than said bequest, and for the same object, does or may operate as an ademption and extinguishment of said legacy; and such, in fact, is claimed to be its operation by the residuary legatees named in said will. Wherefore respondent shows, that he cannot safely pay said sum so bequeathed without the authority of your hon. court, after a hearing of the parties interested under said will. Respondent submits the question aforesaid for the determination of y'r hon. court, and is prepared to do whatever may be decided to be just and equitable in the premises; and he prays to be hence dismissed, with his reasonable costs, &c.; without this, &c.

WALTER S. COX.

30 On this 16th day of October, A. D. 1866, personally appears Walter S. Cox, and makes oath on the Holy Evangely that the matters stated in the aforegoing answer as of his own knowledge, are true, and those stated on information he believes to be true.

R. J. MEIGS, *Clerk.*

1866, Nov. 19.] *Defendant's exhibit No.* 1, *to answer.*

Assignment from Peter Volz to James R. Young.

[$3 00 stamp. cancelled.] This indenture, made this twentieth day of February, in the year one thousand eight hundred and sixty-five, by Peter Volz, of the city of Baltimore, in the State of Maryland, witnesseth: That in consideration of two thousand eight hundred dollars the said Peter Volz doth grant unto James R. Young, of the said city of Baltimore, his personal representatives and assigns, all that piece or parcel of ground situate and lying in the city of Baltimore aforesaid, and described as follows, that is to say: Beginning for the same on the south side of Mulberry street, at the distance of one hundred and ninety-eight feet six inches eastwardly from the southeast corner or in-
31 tersection of Mulberry and Pine streets; and running thence westwardly, binding on the south side of Mulberry street seventeen feet; thence southwardly at right angles with Mulberry street one hundred and eighteen feet, to Sarah Ann street, formerly called Peach alley; thence eastwardly, bounding on the north side of Sarah Ann street, seventeen feet to the southwest corner of a lot of ground heretofore leased by a certain Luke Tiernan to one John Eichelberger; and thence northwardly along and bounding on the west side of that lot, one hundred and eighteen feet to the place of beginning, (it being the same ground which by a deed, dated the fifteenth day of June, A. D. one thousand eight hundred and sixty-four, and recorded among the land records of Batimore city, in Liber A. M., No. 254, folio 260, &c., was assigned by Benjamin T. Hynson to the said Peter Volz, subject to the payment of a yearly rent of fifty-one dollars, payable in equal instalments on the first day of May and November, respectively, in every year; together with the buildings thereupon; and the rights, alleys, ways, waters, privileges, appurtenances, and advantages
32 thereto belonging or in any wise appertaining; to have and to hold the said described ground and premises, unto and to the use of the said James R. Young, his personal representatives and assigns, for all the residue of the term yet to come and unexpired therein with the benefit of renewal forever, subject to the payment of the annual rent aforesaid. In trust and confidence nevertheless, and

to, for, and upon the uses and to the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, conditions, declarations, and limitations hereinafter mentioned, expressed, and declared, of and concerning the same, that is to say, in trust, to suffer and permit Elizabeth S. Pierce, (wife of George W. Pierce, of the [*in pencil* the city] city of Baltimore,) to have, hold, occupy, and enjoy the said lot of ground and premises, and the rents, issues, income, and profits thereof, to receive and apply to her own, sole, and separate use and benefit, during her lifetime, without being in anywise subject to the control, interference, debts, or engagements of her present or of any future husband. And from and after the death of the said Elizabeth S. Pierce, in trust; that the said trustee and his assigns immediately thereafter, in case the
33 youngest of the three children of the said Elizabeth S. Pierce, to wit, Robert Bond, Mary D. Poole, and James D. A. Poole, who shall survive her, shall then have attained the age of twenty-one years, or if none of the said children shall survive the said Elizabeth S. Pierce; but if otherwise, then when and as soon as the youngest of said children who shall survive the said Elizabeth S. Pierce and attain the age of twenty-one years shall have attained that age; or if it should happen at any time after the death of the said Elizabeth S. Pierce, that upon the death of any one of the said children of the said Elizabeth S. Pierce, under the age of twenty-one years, the other or others of said children then surviving shall have attained said age, or there shall be no other of them then surviving, then immediately upon the death of such child, do and shall, upon the happening of any one of the above contingencies whichsoever of them shall first happen forthwith and with all convenient speed sell and dispose of the said lot of ground and premises either at public or private sale to such person or persons as may desire to purchase the same, and for such sum of money as to the said trustee or his assigns may seem reasonable, and do and shall for
34 the purpose of said sale, enter into, make, do, and execute all such contracts, covenants, agreements, conveyances, acts, and things, which to the said trustee or his assigns shall seem reasonable; and the receipt or receipts of the said trustee or his assigns for the purchase-money paid under said sale shall effectually discharge the person or persons paying the same from being answerable therefor, or from being obliged to see to the application thereof or of any part thereof; and that the said trustee and his assigns shall stand and be possessed of the clear nett proceeds in money arising from said sale, after the payment of ground rent, the expenses of said sale, and of all taxes, assessments, liens, and expenses properly chargeable upon said property, in trust as to three-sixths or one-half part of said proceeds of sale, to pay over the same to Robert Bond, the youngest of the said children of the said Elizabeth S. Pierce, if he shall be then living; but if the said Robert Bond be not then living, then to all and every the child, children, or [the] remoter issue of the said Robert Bond who shall be then living, if more than one to be equally divided between them in a course of distribution per stirpes and not per capita and so that the issue of any deceased child of the said Robert Bond shall take, and if more than one, equally between them, only the
35 part or share to which such deceased child would if living have been entitled. And in default of such child or children or remoter issue of the said Robert Bond, then to the widow of the said Robert, if he shall have left a widow surviving him who shall be then living and shall have continued unmarried. But if upon the happening of the contingency upon which such sale is directed to be made as aforesaid, the said Robert shall be then dead, and there be no such child, children, issue,

or widow of the said Robert then living, or if after the happening thereof but before the said sale shall have been made, and the money arising therefrom shall be actually in the hands of the said trustee for distribution and payment as herein directed which it is hereby declared as part of this trust shall not be more than three years after the happening of the contingency aforesaid, the said Robert shall depart this life without leaving any such child, children, issue, or widow surviving him, and who shall be living at the time when said money shall be ready for distribution as aforesaid, then and in either event, in trust, as to the said one-half part or share of said proceeds of sale, for the said James R. Young if he shall then be living; but if he be then dead,
36 in trust for all and every, the daughter or daughters of Elizabeth Mary Fendall, now deceased, sister of the said James R. Young, late the wife of Philip R. Fendall, of Washington city, who shall be then living and shall have continued unmarried, if more than one to be equally divided between them. And in default of such unmarried daughter or daughters, of the said Elizabeth Mary Fendall, in trust for all and every the daughter or daughters then living, and the child, children,or remoter issue then living of any deceased daughter or daughters of the said Elizabeth Mary Fendall, if more than one to be equally divided between them in a course of distribution per stirpes and not per capita, so that the issue of any such deceased daughter shall take, and if more than one, equally between them, only the part or share to which such deceased daughter would, if living, have been entitled. The part or share of any of said daughters, who may be then covert to be for her sole and separate use, and free from the control or interference, debts or engagements of her husband. And in default of such daughter or daughters of the said Elizabeth Mary Fendall, and of such child, children, or issue
37 of a deceased daughter as aforesaid, then for such person or persons as would be entitled thereto as the next of kin and distributees of the said James R. Young, if he had died thereof possessed and intestate, and if more than one in such shares and proportions as they would be so entitled.

And as to another two-sixth or one-third part of said proceeds of sale, in trust to pay over the same to Mary D. Poole, the second of said children of the said Elizabeth S. Pierce if she be then living, and if she be married, to be for her own sole and separate use, benefit, and disposal without being in any way subject to the control, interference, debts, or engagements of her husband, but if the said Mary D. Poole be then dead, leaving a child, children, or issue of a deceased child or deceased children surviving her, then for such child, children, and issue who shall be then living, if more than one, to be equally divided between them in a course of distribution per stirpes and not per capita, and so that such issue shall take only the share or shares to which his, her,or their respective parent or parents would if then living have been entitled. And as to the remaining one-sixth part of said proceeds, in trust to pay over the
38 same to James D. A. Poole, the eldest of the said children of the said Elizabeth S. Pierce if he be then living, and in case he be then dead then to all and every the child and children then living and the issue then living of any deceased child or children of the said James D. A. Poole, if more than one equally to be divided between them in a course of distribution per stirpes and not per capita, so that the issue of any such deceased child shall take and if more than one equally between them only the part or share to which such deceased child would, if then living, have been entitled. And in default of such child, children, or issue then to the widow of the said James D. A. Poole, if there be such

widow then living, and who shall have continued unmarried. And in case either the said Mary D. Poole or James D. A. Poole shall die before the vesting of his or her respective part or share as aforesaid without leaving such child, children, issue, or widow, who shall be capable of taking her or his respective share as aforesaid, then as to the part or share of the one of them so dying as aforesaid, in trust for the
39 survivor of them upon the same trusts to vest at the same time and in the same manner, and to be in all respects subject to the same conditions, limitations, and provisions as the original share heretofore given in trust for the said survivor; and if both of them shall so die as aforesaid, without leaving such person or persons capable of taking their respective shares as aforesaid, then as to both said [*in pencil* said] shares in trust for such person or persons as would be entitled thereto as the next of kin and distributees of the said Elizabeth S. Pierce if she had died possessed thereof intestate and unmarried. And from and after the death of the said Elizabeth S. Pierce, and until the said lot of ground and premises shall be sold and converted into money as aforesaid, in trust that the said trustee and his assigns shall collect and receive the rents, issues, and profits thereof, and after paying thereout all ground-rents, taxes, charges, and assessments upon the said lot of ground and premises, and all proper and reasonable expenses for insurance, and for necessary repairs thereof, the balance thereof remaining shall pay
40 over from time to time as the same shall be received to such person or persons as would at such time and times respectively be entitled under the aforegoing declarations of trust, to the said several shares of the proceeds of sale of said lot of ground and premises in case the same had then been made as hereinbefore directed, and to be divided between them, if more than one in the proportion of the said shares, and their respective presumptive interest therein, with power to the said James R. Young, trustee as aforesaid, to execute a mortgage of the said lot of ground and premises to the said Peter Volz and his assigns, to secure the payment of fourteen hundred dollars of the purchase-money aforesaid, still owing and unpaid, with interest thereon, payable at such time or times as may be agreed upon by the said trustee and the said Peter Volz, and with further power to the said James R. Young for and during the joint lives of himself and the said Elizabeth S. Pierce, by and with the consent in writing of the said Elizabeth to sell the said lot of ground and
41 premises either at public auction or at private sale as he may deem expedient to such person or persons as may desire to become the purchasers thereof, and for such sum of money as to the said trustee may seem reasonable, and for the purpose of making such sale, shall and may enter into, make, do, and execute all such contracts and agreements, conveyances and assurances, acts and things, as to the said trustee may seem reasonable, and the receipts in writing of the said trustee for the purchase-money arising from said sale shall effectually discharge the person or persons to whom the same shall be given from the money therein mentioned and acknowledged to be received, or from being answerable for the misapplication or in anywise bound to see to the application thereof; and the moneys arising from such sale, after deducting all proper and reasonable expenses of said sale, by and with the consent aforesaid, to lay out and invest in the purchase of other real or leasehold property in the city of Baltimore, or of the public stocks or securities of the United States, or of the State of Maryland, or of the city of Baltimore, or such other good and safe interest-
42 bearing stocks or securities as the said trustee may deem proper, and from time to time, with the consent aforesaid, alter, vary,

and transfer the same for and into other property, stocks, funds, and securities of a like nature, when and so often as he shall think fit; the moneys aforesaid, and the property, stocks, funds, and securities in which the same shall be invested as aforesaid, and the rents, profits, interest, dividends, and annual produce thereof to be held and possessed by the said trustee, and his heirs or assigns, according to the nature and tenure thereof, upon and for such and the same trusts, uses, and purposes, and subject to such and the same limitations, conditions, provisoes, and declarations hereinbefore expressed and declared of and concerning the said lot of ground and premises, and the rents, issues, and profits thereof. And it is further declared as the object and intention of this trust and the aforegoing declarations, limitations, and provisions thereof, are upon this condition, that if the said James R. Young, his executors, administrators, or assigns, shall fail to pay off and dis-
43 charge of his or their own proper funds the mortgage hereinbefore mentioned and authorized to be made, within the time therein limited for the payment thereof, but shall suffer the same to be forfeited, or shall at any time within the period limited for the payment of the said mortgage debt make sale of the said lot of ground and premises under any of the powers hereinbefore granted, and shall either sell the same subject to the said mortgage, or apply the proceeds of such sale to the payment and discharge thereof, then, and in either event, all the trusts, powers, and limitations hereinbefore made and declared of and concerning the said lot of ground and premises, and the rents, issues, and profits, and proceeds of sale thereof, shall cease and become null and void; and from and after the time of such forfeiture or of such sale as the case may be, the said trustee, his executors, administrators, and assigns, shall stand possessed of and interested in the said lot of ground and premises subject to the said mortgages and of the rents, issues,
44 and profits thereof, or of the balance of the moneys arising from such sale, as the case may be, in trust for the said Elizabeth S. Pierce, her executors, administrators, and assigns, to and for her sole and separate use, benefit, and disposal, without being subject to the control, interference, debts, liabilities, or engagements of her present or any future husband, with power to the said Elizabeth notwithstanding her coverture, to sell, convey, and dispose of the same, either by deed or last will and testament, or in any other manner as fully and amply as if she were a *feme sole*.

And the said Peter Volz covenants to warrant specially the property hereby granted, and to execute such further assurances as may be requisite.

Witness my hand and seal.

PETER VOLZ. [SEAL.]

Test:

ALLEN E. FORRESTER.

STATE OF MARYLAND, *City of Baltimore, to wit:*

On this twentieth day of February, in the year one thousand eight hundred and sixty-five, before the subscriber, a justice of the peace of the State of Maryland in and for said city of Baltimore, personally appeared Peter Volz, and acknowledged the foregoing deed to be his act.

ALLEN E. FORRESTER.

45 Proceedings before the supreme court of the District of Columbia, sitting in equity, Mr. Chief Justice D. K. Cartter presiding.

MONDAY, *July 8th*, 1867.

The court resumes its session pursuant to adjournment.

1868, July 8.] *Decree dismissing bill.*

ELIZABETH S. PIERCE } v. WALTER COX, trustee } No. 816.—In chancery.

This cause being set for hearing on bill, answer, and exhibits, and the same having been argued by counsel, it is thereupon ordered, adjudged, and decreed this 8th day of July, 1867, that the bill be, and the same is hereby, dismissed with costs.

BY ORDER OF THE COURT.

46 1867, July 13.] *Præcipe for appeal to court in gen'l term.*

PIERCE } v. COX. } In equity.—No. 816.

Mr. CLERK: Enter an appeal from the decree entered in this case.
July 13, 1867. R. J. BRENT,
For Complainant.

Proceedings before the supreme court of the District of Columbing. sitting in general term.

Present, Chief Justice Cartter and Justices

SATURDAY, *November* 23, 1867.

Court resumes session pursuant to adjournment. Present, Chief Justice Cartter and Justices

Decree.—General term.—Affirming decree of equity court.

In the supreme court of the District of Columbia.—In general term.

PIERCE } v. COX. }

47 The appeal from the decree in the above-entitled cause coming on to be heard, and the same having been argued by counsel and considered, it is thereupon, this 23rd of November, 1867, ordered, adjudged, and decreed that the said decree be, and the same is hereby, affirmed with costs.

BY ORDER OF THE COURT.

1868, Feb'y 3.] *Præcipe for appeal to Supreme Court of the U. States.*

PIERCE } v. COX. } In equity.—No. 816.

Mr. CLERK: Enter an appeal from the decree entered in this case, and prepare citation to be served on appellee.
Feb'y 3, '68. BRENT & PHILLIPS,
For Appellant.

Costs of record, $16 00.

Supreme Court of the United States.

No. 158.

ELIZABETH S. PIERCE, APPELLANT,

vs.

WALTER S. COX, TRUSTEE AND ADMINISTRATOR OF JAMES R. YOUNG, DECEASED.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLEE.

W. D. DAVIDGE,
For Appellee.

H. Polkinhorn & Co., prs., D St., bet. 6th and 7th Sts.

In the Supreme Court of the ~~District of Columbia.~~ United States.

No. 158.

ELIZABETH S. PIERCE, APPELLANT,

vs.

WALTER S. COX, TRUSTEE AND ADMINISTRATOR OF JAMES R. YOUNG, DECEASED.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLEE.

This appeal ought to be dismissed for the want of jurisdiction, because—

1st. The matter in dispute is not of the value of $1,000, as required by the act of the 2d of April, 1816, sec. 1, (3 Stat., 261.) The subject of controversary is as follows:

James R. Young, by his will, bequeathed $1,200 of six per cent. stock of the Corporation of Washington in trust, to sell the same at par, if that price could be obtained, and to invest the proceeds of sale in the purchase of a dwelling-house for the benefit of the appellant for her life. On her death the testator directed the property to be sold, and the proceeds distributed among several legatees. (Record, 8.) The testator in his life-time settled a house

upon the appellant for life. (Record, 10.) The Court held, the legacy in her behalf was adeemed by the settlement.

It is submitted that a life estate in $1,200 is below the jurisdiction of this Court.

2d. There was no petition for, nor allowance of, an appeal. (Barrel vs. Transportation Company, 3 Wallace, 424.)

3d. There was neither a citation nor bond.

W. D. DAVIDGE,

For Appellee.

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3d. There was neither a citation nor bond.

W. D. DAVIDGE,
For Appellee.

SUPREME COURT OF THE UNITED STATES.

ELIZABETH S. PIERCE
vs.
COX, *Trustee.*

Brief of Appellant's Counsel.

The bill was filed in this case to compel the investment of $1200 in the purchase of a dwelling house for the Appellant under the will of one James R. Young.

Page 1 of Record.

The clause in the will under which the claim is made, will be found in

Record, p. 8.

The answer of the trustee (appellee,) admits sufficiency of assets but raises the single question, whether this bequest is not adeemed or revoked by a deed of trust procured by the testator in his life time.

Record 9.

The deed of trust is the assignment of a term of years with benefit of renewal forever, to the said James R. Young.

Record 10.

We maintain, that this bequest is not adeemed by the provisions or effect of said assignment in trust—

1st. It will be seen, that specific stock was set aside in the will for the purposes of this investment, and there is

no pretence of an ademption by the testator having in his life converted the stock or changed its character.

2 Williams on Executors, Legacies ch. 3, § 1, page 946.

Where the testator is not in loco parentis, the legacy is considered a bounty and will not be adeemed by a subsequent advancement, unless the money is advanced for the same purpose.

2 Williams' Ex., 957.

It is claimed, that the settlement was for the same purpose as the investment directed by the will.

But we will show that the purposes are distinct.

By the will, *dated* 21 *Nov.*, 1862, the house when purchased for $1200 was to be for the benefit of Mrs. Pierce during her life, to be used as a residence or rented at her option, and at *her death* the same to be sold and the proceeds divided; one-half to the daughters of Mrs. P. R. Fendall, and the other half to Mrs. Brown and her two sons.

Record 8.

By the deed dated 20 Feb., 1865, in consideration of $2500, the settlement is in trust for the benefit of Mrs. Pierce for life, and at her death, to be sold when her youngest child shall arrive at legal age, and the proceeds to be paid over to Robert Bond or his *issue*, and if he be dead or leave no issue, in *trust for said* Young, *if living*, and if *he is dead*, in trust for the daughters of Mrs. Fendall. It will then be seen,

1st. That the property settled is much more valuable than that bequeathed by the will.

Even if this settlement was by one in *loco parentis* where the presumption is against double parentis, the much *greater value* of the advancement would prevent the ademption.

2 Story's Eq., § 1111, *note* 2.

2. That the ultimate limitations after the death of Mrs. Pierce are wholly different in the will and deed, and there is only one *common feature* in both, and that is the creation of a life estate in Mrs. Pierce. The important differences in the limitations over, after the death of Mrs. Pierce the life tenant must be regarded and will overturn the plea of ademption, as *the purpose* of the settlement in its whole scope *is different.*

In Wharton vs. Earl of Durham, 3 Mylve & Keen, 479, Lord Broughan rejected the idea of ademption, because, after the death of the child the portion under one instrument was to go to any issue of the child, while under the other the portion was to go to the *offspring* of a single bed.

See on same point,

Roome vs Roome, 3 Atk., 181.
Sparks vs. Robin, 2 Atk., 491.
Powis vs. Mansfield, 6 Sim. 528.

But the bequest to be impliedly revoked must not only be given by a parent, but must appear on the will to be intended *as a portion* to the child or it will not be adeemed or revoked by a subsequent advancement. See a strong case to this effect.

Ward vs. Lant Pr. Ch., 182.
19 Vesey, 412.

2. But the presumption never applies, where the property to be enjoyed under the will is not *ejusdem generis* with that advanced under the deed, and here the will contemplates the purchase of a house in fee and the deed settles only a chattel real.

2 Story's Eq., 1109.

4. The presumption of ademption does not apply where the testator and settlor is not in *loco parentis* to the devisee and grantee.

2 Story's Eq., § 1117.

It has been excluded where the party receiving the advancement was in fact the illegitimate child of the testator, but there was nothing in the will recognizing the relation.

Exparte Pye, 18 Ves. 140.

I therefore submit, that the decree must be reversed and the relief granted to the complainant below as prayed for.

R. J. BRENT,
For Appellant.